



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

September 6, 2016

Lt. Colonel Matthew Luzzatto
District Engineer
Attn: Mr. Stephen Brumagin
U.S. Army Corps of Engineers
69A Hagood Avenue
Charleston, South Carolina 29403-5107

Subject: I-73 SAC 2008-1333-DIS

Dear Colonel Luzzatto:

This letter is in response to your request for comments on the above referenced joint public notice (JPN). The South Carolina Department of Transportation (Applicant) seeks a permit to perform mechanized land clearing, excavation and the discharge of fill material, in waters of the United States to construct a new four lane limited access highway as part of the proposed I-73 interstate system, approximately 80 miles in length, and located in Marlboro, Dillon, Marion and Horry Counties, South Carolina. In detail, the I-73 project will include permanent placement of fill materials/structures in a total of 4,643 linear feet of stream and a total of 267.2 acres permanent fill, 17.1 acres permanent clearing, 4.4 acres excavation, and 48.9 acres temporary clearing of wetlands as well as 4.6 acres of open water impacts.

The U.S. Environmental Protection Agency Region 4 has reviewed the public notice and supporting information supplied by the applicant. As background, the project was initially put on public notice in 2011. The EPA expressed concerns with the applicant's compensatory mitigation plan in letters dated March 28, 2011, April 28, 2011, January 7, 2013, September 11, 2013, and July 29, 2014. The project was subsequently withdrawn and resubmitted with a revised mitigation plan pursuant to the JPN dated July 8, 2016. The project is also being reevaluated by the Federal Highway Administration to determine if supplemental National Environmental Policy Act documents are required due to the project being inactive for more than three years. This reevaluation is expected to conclude near the end of 2016.

The applicant's revised mitigation plan is to preserve and enhance waters of the United States on a tract of land known as Gunter's Island. The tract is 6,134 acres in size with 89,836 linear feet of stream preservation and enhancement and 4,583.1 acres of wetland preservation. The tract would then be transferred by fee simple ownership to South Carolina Department of Nature Resources to become part of the Heritage Trust Program. While the EPA believes this plan may have potential to provide compensatory mitigation for impacts to waters of the United States, the plan does not currently include enough information to make this determination. At this time, the applicant's plan is primarily preservation. Within the 2008 Mitigation Rule, preservation as compensatory mitigation may be authorized, but the Rule sets out five very specific requirements that must be met before preservation will be considered. See 33 CFR § 332.3(h). These requirements are:

- 1) The resources to be preserved provide important physical, chemical, or biological functions for the watershed;

- 2) The resources to be preserved contribute significantly to the ecological sustainability of the watershed. In determining the contribution of those resources to the ecological sustainability of the watershed, the district engineer must use appropriate quantitative assessment tools, where available;
- 3) Preservation is determined by the district engineer to be appropriate and practicable;
- 4) The resources are under threat of destruction or adverse modifications; and
- 5) The preserved site will be permanently protected through an appropriate real estate or other legal instrument (e.g., easement, title transfer to state resource agency or land trust).

The applicant has addressed the protection of the site and mentioned the resources' contribution to the watershed. However, the contribution to the physical, chemical, and biological functions and ecological sustainability of the watershed should be further explained. Page 16 of the revised mitigation plan dated June 20, 2016, states that stream hydrology has been adversely affected by road crossings associated with timber management. Therefore, it's unclear if waters of the United States on site are functioning sufficiently to be considered preservation worthy. The threat of destruction or modification should also be explained in detail.

The mitigation plan includes wetland and stream enhancement; however, the mitigation plan is not fully fleshed out. Specifics regarding the removal of hydrological impairments and vegetation enhancement are not included. A determination of potential credits was not supplied with the mitigation plan. The EPA requests the applicant use the *U.S. Army Corps of Engineers Charleston District 2010 Guidelines for Preparing a Compensatory Mitigation Plan* or some other assessment method to determine the credits needed to mitigate impacts and the potential credit production of the proposed plan. Further, performance standards and monitoring plans are not provided. The applicant states that this information will be provided to the Corps for review and approval one year following dedication of the property as a Heritage Preserve. The EPA is unable to determine if mitigation is sufficient without this information. A mitigation plan must include objectives; a site protection instrument; a baseline data collection plan for biotic communities, hydrology, etc.; determination of credits; a mitigation work plan; a maintenance plan; performance standards; monitoring requirements; a long-term management plan; an adaptive management plan; and financial assurances, as stated in the 2008 Mitigation Rule.

Based on the above observations, the EPA has determined that the project must address these concerns to comply with the Clean Water Act Section 404(b)(1) Guidelines.

Thank you for considering these comments in your permit review and issuance process. If you have any questions, please contact Mr. Kelly Laycock at laycock.kelly@epa.gov or 404-562-9132 for more information.

Sincerely,



Tony Able
Chief
Wetlands and Streams Regulatory Section